

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

In the Matter of)

)
Amendment of the Commission's)
Rules to Permit Flexible Service)
Offerings in the Commercial)
Mobile Radio Services)

WT Docket No. 96-6

To: The Commission

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REPLY COMMENTS OF METRICOM, INC.

Metricom, Inc., ("Metricom"), by its attorneys, pursuant to § 1.415 of the Commission's rules, hereby submits these Reply Comments in response to Comments filed in the Further Notice of Proposed Rule Making issued in the above-referenced proceeding.^{1/}

As explained in its Comments, Metricom, encouraged by Commission actions in various Part 15 proceedings, has developed Part 15 devices which are employed to provide a wireless, mobile and fixed, data transmission service -- called Ricochet^{2/} -- to the general public.

In its *Further Notice*, the Commission requested comment on the types of flexible service offerings that should be classified

^{1/} Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services, *First Report and Order and Further Notice of Proposed Rule Making*, FCC 96-283, rel. Aug. 1, 1996; 61 Fed. Reg. 43721 (Aug. 26, 1996) ("*Further Notice*" or "*First Report and Order*").

^{2/} Ricochet is a registered trademark of Metricom, Inc.

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as CMRS, and what constitutes "mobile service" pursuant to Section 332 of the Communications Act. Metricom filed Comments in this proceeding to illustrate that a service, like Ricochet, is clearly CMRS and should be designated and regulated as such. Metricom is filing these Reply Comments to emphasize that it is the service which should be regulated regardless of where the service operates in the frequency spectrum.

I. CMRS DESIGNATION MUST BE BASED ON THE SERVICE PROVIDED

As Metricom explained in its Comments, Ricochet meets the definition of CMRS because it is: (1) a mobile service that is (2) provided for profit; (3) interconnected with the public switched network ("PSN"); and (4) available to the public.

U.S. West, Inc. ("U.S. West") made the bald assertion in its Comments that "only those services utilizing CMRS-designated spectrum and provided by CMRS licensees constitute and can be regulated as mobile services."^{3/} No support exists for such an interpretation of Section 332(c); in fact, this type of interpretation runs counter to the intent expressed in the legislative history of Section 332(c). The legislative history demonstrates that "CMRS-designated spectrum" does not exist because, as Metricom explained in its Comments, Congress directed that the FCC adopt rules and regulations governing CMRS based on the service provided, not, as U.S. West suggests, on the spectrum in which the service provider operates.

Section 332(c) of the Communications Act created a new class

^{3/} Comments of U.S. West, Inc., p. 5.

of services to ensure regulatory parity among service providers.^{4/} As Western Wireless' Comments point out, "[o]ne of the principle objectives of the 1993 amendments to the Communications Act was to eliminate disparities in regulation between similar services arising solely because of technical differences between the services."^{5/} The legislative history demonstrates that this new class of services does not depend on, or even take into account, the spectrum in which the service is operating.^{6/} Metricom also agrees with BellSouth that "it should be the nature of the package -- the service offering itself -- and not the status of the entity offering the package, which determines the proper regulatory treatment of the service offering."^{7/}

Metricom maintains that its interpretation of what constitutes a CMRS is what Congress intended when it adopted Section 332(c). Clarifying that a service which meets the definition of CMRS can qualify as CMRS even if the service is provided utilizing Part 15 spectrum clearly implements

^{4/} See H.R. Rep. 103-111, at 259 (1993), reprinted in 1993 U.S.C.C.A.N. 572, 586.

^{5/} Comments of Western Wireless Corporation, p. 7.

^{6/} *Id.* See also *In re Implementation of Sections 3(n) and 332 of the Communications Act: Regulatory Treatment of Mobile Services, Second Report and Order*, 74 RR 2d 835 (1994) at ¶ 25 (the Commission "sought to avoid creating rules that cause mobile radio service providers to be reclassified because of the technological changes in the way they deliver essentially the same services").

^{7/} Comments of BellSouth, p. 4 (emphasis in original).

Congressional intent that Section 332(c) be used to "provide a full opportunity for new entrants to compete" in the provision of CMRS.^{8/}

II. CONCLUSION

WHEREFORE, based on the foregoing, Metricom respectfully requests that the Commission clarify that a service is CMRS if it is provided using Part 15 devices so long as the service meets the definition of CMRS.

Respectfully submitted,

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^{8/} 139 Cong. Rec. H5916 (daily ed. Aug. 4, 1993).